

D. M. YATES

IBLA 83-91, 83-166

Decided June 24, 1983

Appeal from two decisions of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive acquired lands oil and gas lease offer OR 26404 (Wash.) and in whole OR 26452 (Wash.), respectively.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases:
Lands Subject to--Wildlife Refuges and Projects: Generally

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

D. M. Yates has appealed from two decisions by the Oregon State Office, Bureau of Land Management (BLM), the first dated September 10, 1982, rejecting in part her noncompetitive acquired lands oil and gas lease offer, OR 26404 (Wash.), for 6,342.38 acres of land in Adams County, Washington, 1/

1/ The lands described in the offer are as follows: T. 16 N., R. 28 E., Willamette meridian, sec. 1: lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 (all); sec. 2: S 1/2 N 1/2, NW 1/4 SW 1/4; sec. 3: S 1/2; sec. 9: E 1/2, SW 1/4; sec. 10: NW 1/4 NW 1/4, SE 1/4; sec. 12: E 1/2, N 1/2 NW 1/4, S 1/2 SW 1/4; sec. 13: N 1/2; sec. 15: all; sec. 17: N 1/2, SW 1/4, N 1/2 SE 1/4, SW 1/4, SE 1/4 sec. 18: N 1/2 SE 1/4; sec. 19: lots 1, 2, 3, 4, E 1/2 W 1/2, E 1/2 (all); sec. 20: S 1/2 NW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4; sec. 21: N 1/2 NE 1/4; sec. 32: NW 1/4; sec. 29: E 1/2, E 1/2 NW 1/4, E 1/2 SW 1/4 NW 1/4, SW 1/4; sec. 31: lots 1, 2, 3, 4, E 1/2 W 1/2, E 1/2 (all).

and the other dated October 26, 1982, rejecting her noncompetitive acquired lands oil and gas lease offer, OR 26452 (Wash.), for 640 acres of land in Adams County, Washington. 2/ BLM rejected appellant's offers because the land sought lies within the boundaries of a National Wildlife Refuge. The surface management agency, the United States Fish and Wildlife Service (FWS), takes the position that wildlife refuge lands are exempt from oil and gas leasing under 43 CFR 3101.3-3(a), except when these lands are subject to drainage. In such instances, leases are offered only under competitive bidding. Appellant's offer, OR 26404 (Wash.), was also rejected as to parts of three sections 3/ because title was conveyed from the United States without a reservation of the oil and gas. That offer was accepted as to 18.81 acres 4/ under the jurisdiction of the Bureau of Reclamation and a lease was issued on October 8, 1982, effective November 1, 1982, for that land.

Appellant, in her statements of reasons for appeal, contends that: (1) The BLM decision not to lease is in error and is arbitrary and capricious because the subject land does not fall within the definition of 43 CFR 3101.3-3(a) in that 'the withdrawals of record do not describe these lands;' (2) the BLM decision on OR 26404 (Wash.) does not provide appellant sufficient information as it fails to adequately describe the land rejected because of the conveyance of title by the United States with no reservation of oil and gas; (3) the issuance of a lease for 18.81 acres of the 6,342.38 acres in offer OR 26404 (Wash.) is inappropriate in view of the appeal.

[1] The regulation cited by BLM, 43 CFR 3101.3-3(a)(1), provides, in relevant part, that '[n]o offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in section 3101.3-1 [lands subject to drainage].' 'Wildlife refuge lands' are defined as follows:

Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing. [Emphasis added.]

43 CFR 3101.3-3(a).

It appears that the lands sought are in the Columbia National Wildlife Refuge. The applicable regulation, 43 CFR 3101.3-3, has been interpreted to

2/ T. 16 N., R. 28 E., Willamette meridian, sec 11: all.

3/ T. 16 N., R. 28 E., Willamette meridian, 'sec. 3, 17 and 29 in part.'

4/ T. 16 N., R. 28 E., Willamette meridian, 'sec. 9: That portion of the NW 1/4 SW 1/4 acquired by the Bureau of Reclamation not transferred to the U.S. Fish and Wildlife Service, consisting of 18.81 acres more or less.' (Emphasis in original.)

mean that oil and gas leasing is precluded only on lands embraced in a withdrawal for the protection of all species of wildlife within a particular area. Nugget Oil Corp., 61 IBLA 43 (1981); Esdras K. Hartley, 57 IBLA 319 (1981). The withdrawal orders which we have located, establishing and enlarging the Columbia National Wildlife Refuge, 5/ do not encompass the subject lands. We have been unable to establish that the subject lands are embraced in such a withdrawal. 6/ If the lands sought by appellant are not in a withdrawal as defined in 43 CFR 3101.3-3, then oil and gas leasing is not precluded by 43 CFR 3101.3-3.

This Board has held that the Secretary may exercise his discretion under the mineral leasing laws to reject oil and gas lease offers where the land is used as a habitat for animals. Chester L. Pringle, 70 IBLA 254 (1983); Bernard A. Holman, 64 IBLA 13 (1982); Esdras K. Hartley, *supra*. Where the record indicates that the development of an oil and gas field would be incompatible with this public purpose, BLM's decision not to issue the lease will be affirmed in the absence of compelling reasons for its modification or reversal. Id. However, in the absence of the land sought being withdrawn as defined in 43 CFR 3101.3-3, with respect to acquired land lease offers a recommendation by FWS that oil and gas leasing is incompatible with the purpose for which the national wildlife refuge was established is not conclusive, even though the land is under FWS jurisdiction. Bernard A. Holman, *supra*, and cases cited therein. Where acquired lands are under the jurisdiction of a bureau of the Department of the Interior, it is the Secretary's consent which is necessary to leasing of the land. Id. 7/

Thus, BLM must investigate how the lands sought came to be included in the refuge. If they are withdrawn as defined in 43 CFR 3101.3-3, then leasing the lands is precluded. If they are not in such withdrawal, then BLM must determine whether, in the discretion of the Secretary, the lands sought should be leased.

Since we are remanding for a determination concerning the nature of the relevant lands included in the refuge, it is unnecessary to address appellant's

5/ The Columbia National Wildlife Refuge was created pursuant to Public Land Order (PLO) No. 243 (9 FR 11400 (Sept. 6, 1944)). The refuge was enlarged by PLO 1766 (23 FR 9780 (Dec. 12, 1958)); modified by PLO 3062 (28 FR 4561 (May 1, 1963)); and added to by PLO 4954 (35 FR 18381 (Nov. 27, 1970)).

6/ Although Altex Oil Corp., 73 IBLA 73 (1983), found 43 CFR 3101.3- 3(a) applicable to land within the Columbia National Wildlife Refuge even though a specific order withdrawing the rejected land in question as part of the refuge was not located, the rationale for so holding was that there had been no showing or contention by appellant that the land had a different status from other land included in the Columbia National Wildlife Refuge. That is not the situation here where appellant contends there is no withdrawal of the subject land within the definition of 43 CFR 3101.3-3(a).

7/ An exception to this general rule would be for certain national recreation areas where 43 CFR 3566.3 provides that leasing will take place 'only with the consent of the Regional Director, National Park Service.' See S. Dawson, 73 IBLA 301 (1983).

concern that BLM did not adequately describe the lands rejected because they were patented without a mineral reservation, except to note that upon remand appellant may examine the case file and may seek any necessary clarification from BLM.

Finally, appellant claims that issuance of a lease for 18.81 acres in offer OR 26404 (Wash.) is inappropriate in view of her appeal. This contention is not without some merit. The effect of the decision rejecting OR 26404 (Wash.) was stayed during the appeal period and continues to be stayed pending resolution of this appeal. See 43 CFR 4.21(a). Therefore, since we are remanding this case for determination of whether other acreage in that offer may be leased, a finding by BLM that other acreage in the offer is leasable could lead to the anomalous situation of issuing a second lease for lands described in the offer. Clearly, the better practice is to await final Departmental adjudication of an offer before issuance of a lease so that all available lands may be included in that lease. However, we cannot find that BLM's issuance of the lease was improper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

September 19, 1983

IBLA 83-91, 83-166,	:	OR 26404 (Wash.), 26452 (Wash.)
74 IBLA 8	:	
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D. M. Yates :	:	Oil and Gas
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ERRATA

The following changes are made to the above-captioned decision.

Citation to 43 CFR 3566.3 on 74 IBLA page 10 (footnote 7.) is changed to citation to 43 CFR 3109.5-2(e) (1982) (now 43 CFR 3109.2(b)).

The provisions of 43 CFR 3566.3 and 43 CFR 3109.5-2(e) (1982) are identical; both require consent of the National Park Service (NPS) before the Bureau of Land Management may issue a lease in NPS areas. However, the latter regulation applied specifically to oil and gas lease offers, and the former applied more generally to offers to lease other minerals. Since the case cited in footnote 7 concerned an oil and gas lease offer, 43 CFR 3109.5-2(e) (1982) applied and should have been cited.

Bruce R. Harris
Administrative Judge

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